AIR TRANSPORT SERVICES

Agreement with annex, schedules, and exchange of notes signed at Cape Town May 23, 1947
Entered into force May 23, 1947
Amended by agreements of July 21 and November 2, 1953,[1] *and June 28, 1968* [2]

61 Stat. 3057; Treaties and Other International Acts Series 1639

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOUTH AFRICA RELATING TO AIR SERVICES BETWEEN THEIR RESPECTIVE TERRITORIES

The Government of the United States of America and the Government of the Union of South Africa, considering—

that the possibilities of commercial aviation as a means of transport have greatly increased, and

that it is desirable to organize the international air services in a safe and orderly manner and to further as much as possible the development of international co-operation in this field,

have appointed their representatives, who duly authorized, have agreed upon the following:

ARTICLE I

The contracting parties grant to each other the rights specified in the annex hereto for the establishment of the international air services set forth in that annex, (hereinafter referred to as the "agreed services").

ARTICLE II

(A) The agreed services may be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted, on condition that—

(1) the contracting party to whom the rights have been granted shall have designated an air carrier or carriers for the specified route or routes;

[1] 4 UST 2205; TIAS 2870.
[2] 19 UST 5193; TIAS 6512.

(2) the contracting party which grants the rights shall have given the appropriate operating permission to the air carrier or carriers concerned pursuant to paragraph (B) of this article which (subject to the provisions of Article VI) it shall do with the least possible delay.

(B) The designated air carrier or carriers may be required to satisfy the aeronautical authorities of the contracting party granting the rights that it or they is or are qualified to fulfil the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operations of commercial air carriers.

ARTICLE III

(A) The charges which either contracting party may impose or permit to be imposed on the designated air carrier or carriers of the other contracting party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft employed in similar international air services.

(B) Fuel, lubricating oils and spare parts introduced into, or taken on board aircraft in the territory of one contracting party by, or on behalf of, any designated air carrier of the other contracting party and intended solely for use by the aircraft of such carrier shall be accorded, with respect to customs duties, inspection fees and other charges imposed by the former contracting party, treatment not less favourable than that granted to national air carriers engaged in international air services or such carriers of the most favoured nation.

(C) Aircraft of the designated airline of one contracting party operating on the agreed services on a flight to, from or across the territory of the other contracting party shall be admitted temporarily free from customs duties subject otherwise to the customs regulations of such other contracting party. Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of any designated air carrier of one contracting party shall be exempt in the territory of the other contracting party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights within that territory.

ARTICLE IV

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one contracting party and still in force shall be recognized as valid by the other contracting party for the purpose of operation of the agreed services. Each contracting party reserves the right, however, to refuse to recognize for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another state.

ARTICLE V

(A) The laws and regulations of one contracting party relating to the admission to or departure from its territory of aircraft engaged in interna-

tional air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the other contracting party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party.

(B) The laws and regulations of each contracting party as to the admission to, sojourn in and departure from its territory of passengers, crew and cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be observed.

ARTICLE VI

Each contracting party reserves the right to withhold or revoke a certificate or permit to an air carrier designated by the other contracting party in the event that it is not satisfied that substantial ownership and effective control of such carrier are vested in nationals of the other contracting party, or in case of failure by that carrier to comply with the laws and regulations referred to in Article V hereof, or otherwise to fulfil the conditions under which the rights are granted in accordance with this agreement and its annex.

ARTICLE VII

(A) In a spirit of close collaboration, the aeronautical authorities of the two contracting parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in this the present agreement and its annex.

(B) In the event of the aeronautical authorities of either contracting party failing or ceasing to publish information in relation to the agreed services on lines similar to that included in the Airline Traffic Surveys (Station to Station and Origination and Destination) now published by the Civil Aeronautics Board and failing or ceasing to supply such data of this character as may be required by the International Civil Aviation Organization, the aeronautical authorities of such contracting party shall supply, on the request of the aeronautical authorities of the other contracting party, such information of that nature as may be requested.

ARTICLE VIII

For the purpose of the present agreement and its annex—

(A) the term "territory" as applied to each contracting party shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, mandate, or trusteeship of such contracting party;

(B) the term "aeronautical authorities" shall mean in the case of the Union of South Africa the Minister in Charge of Civil Aviation, and in the case of the United States the Civil Aeronautics Board, and in both cases any

308-582—73——34

person or body authorized to perform the functions presently exercised by the aeronautical authorities as defined herein;

(C) the term "international air services" shall have the meaning specified in Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.[3]

ARTICLE IX[4]

Except as otherwise provided in this agreement or its annex, any dispute between the contracting parties relative to the interpretation or application of this agreement or its annex, which cannot be settled through consultation, shall be submitted for an advisory report to a tribunal of three arbitrators, one to be named by each contracting party, and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either contracting party. Each of the contracting parties shall designate an arbitrator within two months of the date of delivery by either party to the other party of a diplomatic note requesting arbitration of a dispute; and the third arbitrator shall be agreed upon within one month after such period of two months. If the third arbitrator is not agreed upon, within the time limitation indicated, the vacancy thereby created shall be filled by the appointment of a person, designated by the president of the council of ICAO, from a panel of arbitral personnel maintained in accordance with the practice of ICAO. The executive authorities of the contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. A moiety of the expenses of the arbitral tribunal shall be borne by each party.

ARTICLE X

This agreement and all relative contracts shall be registered with the International Civil Aviation Organization.

ARTICLE XI

(A) This agreement, including the provisions of the annex thereof, will come into force on the day it is signed.

(B) Either contracting party may at any time request consultation with the other with a view to initiating any amendments of this agreement or its annex which may be desirable in the light of experience. If a multilateral air convention enters into force in relation to both contracting parties, such consultation shall take place with a view to amending the present agreement or its annex so as to conform to the provisions of such a convention.

(C) Except as otherwise provided in this agreement or its annex, if either of the contracting parties considers it desirable to modify the terms of the annex to this agreement it may request consultation between the aeronautical authorities of both contracting parties, such consultation to

[3] TIAS 1591, *ante*, vol. 3, p. 969.

[4] For an understanding regarding art. IX, see exchange of notes, p. 510.

begin within a period of sixty days from the date of the request. Any modification in the annex agreed to by said aeronautical authorities shall come into effect when it has been confirmed by an exchange of diplomatic notes.

(D) When the procedure for a consultation provided for in paragraph (B) of the present article has been initiated, either contracting party may at any time give notice to the other of its desire to terminate this agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization.

This agreement shall terminate one year after the date of receipt of the notice to terminate by the other contracting party unless the notice is withdrawn by agreement before the expiration of this period. In the absence of acknowledgment of receipt by the other contracting party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

Done at Cape Town this 23rd day of May, 1947, in duplicate in the English and Afrikaans languages, each of which shall be of equal authenticity.

For the Government of the United States of America:
T. HOLCOMB [SEAL]

For the Government of the Union of South Africa:
J. C. SMUTS [SEAL]

ANNEX

SECTION I

The Government of the United States of America grants to the Government of the Union of South Africa the right to conduct air transport services by one or more air carriers of South African nationality designated by the latter country on the routes, specified in Schedule I attached, which transit or serve commercially the territory of the United States of America.

SECTION II

The Government of the Union of South Africa grants to the Government of the United States of America the right to conduct air transport services by one or more carriers of United States nationality designated by the latter country on the routes, specified in Schedule II attached, which transit or serve commercially territory of the Union of South Africa.

SECTION III

One or more air carriers designated by each of the contracting parties under the conditions provided in this agreement will enjoy, in the territory of the other contracting party, rights of transit, of stops for non-traffic

purposes and of commercial entry and departure for international traffic in passengers, cargo and mail at the points enumerated and on each of the routes specified in the schedules attached at all airports open to international traffic.

SECTION IV

It is agreed between the contracting parties—

(A) that the two governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles; and to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and ensuring as well the many indirect benefits of this new form of transportation to the common welfare of both countries;

(B) that the designated airlines of the two contracting parties operating on the routes described in this annex shall enjoy fair and equal opportunity for the operation of the agreed services. If the designated airline of one contracting party is temporarily unable, as a result of the war to take advantage of such opportunity, the contracting parties shall review the situation with the object of assisting the said airline to take full advantage of the fair and equal opportunity to participate in the agreed services;

(C) that in the operation by the air carriers of either contracting party of international services described in the present annex, the interests of the air carriers of the other country shall, however, be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same route;

(D) that the total air transport services offered by the carriers of both countries should bear a close relationship to the requirements of the public for such services;

(E) that the services provided by a designated air carrier under this agreement and its annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of the traffic;

(F) that the right of the air carriers of either country to embark and to disembark at points in the territory of the other country international traffic destined for or coming from third countries at a point or points on the routes specified in the schedules attached shall be applied in accordance with the general principles of orderly development to which both governments subscribe and shall be subject to the general principle that capacity shall be related—

(1) to traffic requirements between the country of origin and the countries of destination;

(2) to the requirements of through airline operation; and

(3) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

SECTION V

(A) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service.

(B) The rates to be charged by the air carriers of either contracting party between points in the territory of the United States and points in the territory of the Union of South Africa referred to in this annex shall, consistent with the provisions of the present agreement and its annex, be subject to the approval of the aeronautical authorities of the contracting parties, who shall act in accordance with their obligations under the present annex, within the limits of their legal powers.

(C) The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called "IATA"), for a period of one year beginning in February, 1947, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval by the Board.

(D) Any rate proposed by the air carrier or carriers of either contracting party shall be filed with the aeronautical authorities of both contracting parties at least thirty days btfore the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both contracting parties.

(E) The contracting parties agree that the procedure described in paragraphs (F), (G) and (H) of this section shall apply—

(1) if, during the period of the Civil Aeronautics Board's approval of the IATA traffic conference machinery, either any specific rate agreement is not approved within a reasonable time by either contracting party or a conference of IATA is unable to agree on a rate; or

(2) if at any time no IATA machinery is applicable; or

(3) if either contracting party at any time withdraws or fails to renew its approval of that part of the IATA traffic conference machinery relevant to this section.

(F) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for

the transport of persons and property by air within the United States, each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one contracting party to a point or points in the territory of the other contracting party from becoming effective, if in the judgment of the aeronautical authorities of the contracting party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the contracting parties on receipt of the notification referred to in paragraph (D) above is dissatisfied with the rate proposed by the air carrier or carriers of the other contracting party, it shall so notify the other contracting party prior to the expiry of the first fifteen of the thirty days referred to, and the contracting parties shall endeavour to reach agreement on the appropriate rate.

In the event that such agreement is reached, each contracting party will exercise its statutory powers to give effect to such agreement.

If agreement has not been reached at the end of the thirty day period referred to in paragraph (D) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (H) below.

(G) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the contracting parties is dissatisfied with any rate proposed by the air carrier or carriers of either contracting party for services from the territory of one contracting party to a point or points in the territory of the other contracting party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred to in paragraph (D) above, and the contracting parties shall endeavour to reach agreement on the appropriate rate.

In the event that such agreement is reached each contracting party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the contracting party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

(H) When in any case under paragraphs (F) and (G) above the aeronautical authorities of the two contracting parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one contracting party concerning the proposed rate or an existing rate of the air carrier or carriers of the other contracting party, upon the request of either, both contracting parties shall submit the question to arbitration in the manner prescribed in Article IX of the Agreement.

(I) The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States.

SECTION VI

It is recognized that the determination of tariffs to be applied by an air carrier of one contracting party between the territory of the other contracting party and a third country is a complex question, the overall solution of which cannot be sought through consultation between only two countries. It is noted, furthermore, that the method of determining such tariffs is now being studied by ICAO. It is understood under these circumstances—

(A) that, pending the acceptance by both parties of any recommendations which ICAO may make after its study of this matter, such tariffs shall be subject to consideration under the provisions of Section IV (C) of the annex to the agreement.

(B) that in case ICAO fails to establish a means of determining such rates satisfactory to both contracting parties, the consultation provided for in Article X (B) of the agreement shall be in order.

SECTION VII [5]

Changes made by either contracting party in the routes described in the schedules attached except those which change the points served by airlines of one contracting party in the territory of the other contracting party shall not be considered as modifications of the annex. The aeronautical authorities of either contracting party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change is given without delay to the aeronautical authorities of the other contracting party.

If such other aeronautical authorities find that, having regard to the principles set forth in Section IV of the present annex, interests of their air carrier or carriers are prejudiced by the carriage by the air carrier or carriers of the first contracting party of traffic between the territory of the second contracting party and the new point in the territory of a third country, the authorities of the two contracting parties shall consult with a view to arriving at a satisfactory agreement.

SECTION VIII

After the present agreement comes into force, the aeronautical authorities of both contracting parties will exchange information as promptly as possible

[5] Sec. VII deleted by agreement of June 28, 1968 (19 UST 5193; TIAS 6512).

concerning the authorizations extended to their respective designated air carriers to render service to, through and from the territory of the other contracting party. This will include copies of current certificates and authorizations for service on the routes which are the subject of this agreement and, for the future, such new authorizations as may be issued together with amendments, exemption orders and authorized service patterns.

SCHEDULE I [6]

Airlines of the Union of South Africa authorized under the present agreement are accorded in the territory of the United States on a service or services between the Union of South Africa and New York rights of transit and non-traffic stop, as well as the right to pick up and discharge international traffic in passengers, cargo and mail at such points and over such routes as may be determined at a later date.

SCHEDULE II [7]

Airlines of the United States of America authorized under the present agreement are accorded rights of transit and non-traffic stop in the territory of the Union of South Africa, as well as the right to pick up and discharge international traffic in passengers, cargo and mail at Johannesburg and Cape Town on the following routes in both directions. On each of the routes described below the airline or airlines designated to operate such route may operate non-stop flights between any of the points on such route omitting stops at one or more of the other points on such route.

(1) United States via the North Atlantic and Africa to Johannesburg.
(2) United States via the Caribbean, South America, the South Atlantic and Africa to Cape Town.

EXCHANGE OF NOTES

The American Minister to the Minister of External Affairs

LEGATION OF THE
UNITED STATES OF AMERICA
CAPE TOWN
May 23, 1947

SIR:

I have the honor to refer to the Bi-lateral Air Transport Agreement concluded today between the Governments of the United States and the Union

[6] For an amendment of schedule I, see agreement of June 28, 1968 (19 UST 5193; TIAS 6512).

[7] For amendments of schedule II, see agreements of July 21 and Nov. 2, 1953 (4 UST 2205; TIAS 2870), and June 28, 1968 (19 UST 5193; TIAS 6512).

of South Africa at Cape Town and in regard to Article IX of this Agreement to state that it is the understanding of my Government that in the event either contracting party should find itself unable to carry out the terms of an advisory report which recommends rectifying action on the part of both contracting parties, the contracting party which finds itself unable to carry out the terms of such an advisory report shall so notify the other contracting party which, upon receipt of such notification, will not necessarily be bound to carry out the terms of such an advisory report.

This note and your confirmatory reply thereto will be regarded as constituting an agreement between the two Governments in the matter.

Please accept, Sir, the renewed assurance of my highest consideration.

T. HOLCOMB

Field Marshal
The Right Honorable
J. C. SMUTS, O.M., P.C., C.H., K.C., D.T.D., M.P.,
Minister of External Affairs,
Cape Town.

The Minister of External Affairs to the American Minister

DEPARTMENT OF EXTERNAL AFFAIRS

CAPE TOWN
23 May 1947

MR. MINISTER,

I have the honour to acknowledge your note of today's date, which reads as follows:—

[For text, see U.S. note, above.]

I confirm that your note and this reply will be regarded as constituting an agreement to this effect between the two Governments.

Please accept, Mr. Minister, the renewed assurance of my highest consideration.

J. C. SMUTS
Minister of External Affairs

General THOMAS HOLCOMB,
Envoy Extraordinary and
Minister Plenipotentiary of
the United States of America,
Cape Town.